



## UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/519,955	12/30/2004	Kasper Kokkonen	4819-4735	7370
27123	7590	06/22/2009		
MORGAN & FINNEGAN Transition Team				
C/O Locke Lord Bissell & Liddell				
3 WORLD FINANCIAL CENTER				
NEW YORK, NY 10281-2101				
EXAMINER				
YANG, JIE				
ART UNIT		PAPER NUMBER		
1793				
NOTIFICATION DATE		DELIVERY MODE		
06/22/2009		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

Shopkins@Lockelord.com  
OWalker@Lockelord.com

**Advisory Action  
Before the Filing of an Appeal Brief**

**Application No.**

10/519,955

**Applicant(s)**

KOKKONEN ET AL.

**Examiner**

JIE YANG

**Art Unit**

1793

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 08 April 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1-6 and 9-13.  
Claim(s) withdrawn from consideration: 14-18.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

/Roy King/  
Supervisory Patent Examiner, Art Unit 1793

Continuation of 7. Note: claims 7 and 8 have been cancelled and the limitation of claims 7 and 8 are added into independent claim 1. The amendments moot a new ground of rejection.

Claims 1-6, 9-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ikoma et al (US 5,685,892, thereafter US'892) in view of in view of Murakami et al (US, 4,578,977, thereafter US'977).

US'892 is applied as discussed in the previous office actions marked 4/8/2009, 8/7/2008, 3/31/2008 and 10/04/2007. Regarding the newly added limitation of a bending element consisting of four rolling rollers configured to essentially completely bend the anode on both sides, wherein each rolling rollers has a diameter range from 100 to 500mm, US'892 does not explicitly teach bending the anode by a four rolling rollers that are located above the feeding funnel and the diameter of rolling roller is 100 to 500 millimeters. As discussed in the rejection for the claim 1, US'892 teaches similar bending technique to change the anode sheet shape with different bending angles for same purpose-feeding anode sheet in an essentially horizontal position as recited in the instant claim. Applying four rolling rollers to perform bending on metal is a well-known technique as evidenced by US'977. US'977 teaches two to four rolls selected from the group, the four rolling rolls are used for performing roll bending on shape metal (Abstract of US'977). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention was made to optimize the bending technique, for example, using four rolling rollers with diameters 100 to 500 millimeters and arrange the above the feeding funnel as demonstrated in US'892(Col. 8, Line 6-64 of US'892) in view of US'977 to avoid anodes impinging against the furnace bottom (Col.7, line 48-59 of US'892). See MPEP 2144.05 II.

Continuation of 11. does NOT place the application in condition for allowance as discussed above. Applicant's arguments are summarized as follows:

1, Neither US'892 nor US'977 alone or in combination teach or suggest the apparatus as claim 1. In particular, US'892 does not teach feeding an anode into a smelting reactor in an essentially horizontal position; neither US'892 and US'977 teach or suggest an apparatus configured to essentially completely bend an anode with a radius of curvature of about 1,000-about 3,000 mm; US'977 does not teach the same type of bending as recited in the instant claim.

2, Neither US'892 nor US'977 teach or suggest each rolling roller has a diameter range from 100 to 500mm.

In responses:

Regarding arguments 1 and 2, firstly, the applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In the instant case, US'892 in view of US'977 teaches the limitations of instant claims 1-6 and 9-13. The motivations for combining these references can refer the discussion above.

Secondly, applying four rolling rollers to perform bending on metal is a well-known technique as evidenced by US'977. US'977 teaches two to four rolls selected from the group, the four rolling rolls are used for performing roll bending on shape metal (Abstract of US'977). It is well settled that the manner in which an apparatus operates is not germane to the issue of patentability of the apparatus itself. *Ex parte Wikdahl* 10 USPQ 2d 1546, 1546 (BPAI 1989); *Ex parte McCullough* 7 USPQ 2d 1889, 1891 (BPAI 1988); *In re Finsterwalder* 168 USP 530 (CCPA 1971); *In re Casey* 152 USPQ 235, 238 (CCPA 1967). In the instant case, the prior art apparatus of US'892 in view of US'977 would be capable of being operated in the manner as claimed. Therefore, the amended features of "essentially completely bending the anode on both sides with respect to the center of the anode and having a radius of curvature of 1,000-3,000 millimeters" do not add patentability weight to the instant apparatus claims for the feeding anode. MPEP 2114 [R-1]; The diameter of rolling roller is recognized as a result-effective variable in term of bending result, which is evidenced by US'977. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to optimize the bending technique including picking a proper diameter rolling roller and arrange the feeding funnel in order to avoid anodes impinging against the furnace bottom as demonstrated in US'892 in view of US'977.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jie Yang whose telephone number is 571-2701884. The examiner can normally be reached on IFP.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Roy King can be reached on 571-2721244. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.